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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/611,960

07/03/2003

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EXAMINER

TRAN, MYLINH T

ART UNIT

PAPER NUMBER

2179

MAIL DATE

DELIVERY MODE

11/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/611,960	Applicant(s) KURTENBACH, GORDON P.	
	Examiner MYLINH TRAN	Art Unit 2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7 and 12-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7 and 12-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's request for reconsideration filed 07/21/08 has been entered. However, the limitations of the claims have not been found to be patentable over prior art of record; therefore, claims 1-3, 7 and 12-25 are rejected under the same ground of rejection as set forth in the Office Action mailed 03/20/08.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 7 and 12-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith [US. 5,721,853].

As to claims 1, 7, 12, 15-16 and 23, Smith teaches a computer implemented method and corresponding apparatus for a menu selection comprising the steps/means for a display displaying menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion (figure 3D, the radial marking menu portion on three quadrants:

Tools, Ask AST and S/W Suites. These menu portions also are linear menu portions);

a pointing device for indicating a type of selection by one of making a stroke having a direction and designating a location (figure 2, column 4, line 45 through column 5, line 3); and a computer connected to a display and said pointing device (figure 2, (23)), and determining selection criteria for the type and a menu selection based on a method of selection from one of the stroke and the location (figure 3E, column 5, line 40 through column 6, line 6).

Smith also teaches a display displaying a menu comprising a radial marking menu portion and a linear menu portion at figure 3D.

Smith also teaches two different portions of radial marking menu (figure 3D) and linear menu (figure 3C).

As to claim 2, Smith teaches the menu including at least nine selectable menu items (figure 3E).

As to claim 3, Smith teaches the menu including at least one menu item selectable based on the designating of only a location (figure 2, column 4, line 45 through column 5, line 3).

As to claims 13-14, 17, Smith teaches specifying selection criteria of a radial marking menu item when a method of selection is a stroke direction in the radial marking menu portion (column 5, lines 40 through column 6, line 6) and specifying selection criteria of a linear location menu item when a method of selection uses an end point of the stroke

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when the stroke is in a linear location selection region (column 5, lines 4-40).

Smith teaches the radial marking menu portion at figure 3D and the linear menu portion at figure 3C.

As to claims 18-19, Smith shows making a stroke in a menu, selecting a displayed first item of the menu when the stroke terminates inside the displayed first item of the menu and selecting, based on the stroke, a second item of the menu, when the stroke does not terminate inside any displayed items of the menu (figure 3D, column 6, lines 27-55).

As to claims 20-22, Smith teaches a radial portion, a linear portion and a menu selection being based on a stroke, selection of a radial menu item of radial portion being suppressed when a pointer location is in the linear portion (column 5, lines 4-40), the radial menu item selection being reactivated when the pointer location exits a linear item in the linear portion and when the pointer location crosses a radial portion boundary line extending across the menu (column 5, line 40 through column 6, line 6).

AS to claim 24, Smith teaches the pointing device allowing a user to select by both making a stroke and designating a location and for indicating a type of selection by the user making one of a stroke having a direction for radial marking menu selection and designating a location (selection of each of the quadrants 202-208 (figure 3A-E) is by movement of the mouse pointer (23) into any of the four quadrants

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causes the corresponding secondary interface to be displayed. Moving the mouse pointer (23) over the quadrant 204 (figure 2) labeled "Ask AST" a cause a secondary interface comprising plurality of menus. These menus are displayed and selected by movement of the mouse pointer into any of the four quadrants (a stroke). The step of moving the mouse pointer over these quadrants is similar to the step of making a stroke having a direction and designating a location).

As to claim 25, Smith teaches the pointing device for indicating a type of selection by one of making a stroke having a direction and designating a location local to both the display and the pointing device (selection of each of the quadrants 202-208 (figure 3A-E) being by movement of the mouse pointer (23) into any of the four quadrants causes the corresponding secondary interface to be displayed is considered as a radial marking selection type. Selection of any menu from a linear menu portion 306d, figure 3D is considered as a linear selection type. Therefore, it is clear that Smith teaches determining selection criteria for the type and a menu item selection based on a method of selection from the one of the stroke and the location).

Response to Arguments

Applicant has argued about the Declarations and Attachments filed 06/11/07. The arguments have been considered but they are still not persuasive. Therefore, the rejection has been maintained.

1) Both Declarations and Attachments, numbered paragraph 2 from the June, 2007 Declaration have been considered but they are ineffective to overcome the applied references.

The applicant fails to map the supported document of Exhibit B to each and every limitation in the invention claims.

The declaration and accompanying Attachment B do not provide enough evidences to support all the claimed limitations prior to the reference date, therefore do not support conception of the claimed invention. For example, there is no explanation of the exhibits, pointing out or positive statement on the declaration to support the limitation “a display displaying a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion, a pointing device for indicating a type of selection by one of making a stroke having a direction and designating a location; and a computer connected to said display and said pointing device, and determining selection criteria for the type and a menu item selection based on a method of selection from the one of the stroke and the location” in claims 1-3, 7, 12-25.

There is no map and relation between each limitation of the claims with the information provided Exhibit B. The aforementioned limitations in claims 1-3, 7, 12-25 merely provide as example of insufficient evidence supporting conception of the claimed invention. It is to be understood that there are other claimed limitations that are not sufficiently supported

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by the evidence provided by the declaration and the accompany Attachments.

The evidence submitted is insufficient to establish diligence from the 3/9/1995 (concept of invention) to the filing date of this instant applicant: The applicant fails to provide support for diligence between 3/9/95 and 5/5/95, where evidence of record show no activity within this time gap.

2) Applicant has argued that Smith fails to provide “two different portions of radial marking menu and linear menu”. However, Smith teaches two different portions of radial marking menu (figure 3D, the radial marking menu portion on three quadrants: Tools, Ask AST and S/W Suites (302c, 304c, 306c)); and (the linear menu: “edutainment”, “productivity”, “communication” are lined up in the linear menu, figure 3D). The two menu are located in two different portions disclosed at figure 3D.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mylinh Tran. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4141.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached at 571-272-4847.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ba Huynh/

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Primary Examiner, Art Unit 2179